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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/795,936

03/08/2004

Kenneth Gimelli

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EXAMINER

STULII, VERA

ART UNIT

PAPER NUMBER

1761

MAIL DATE

DELIVERY MODE

09/05/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/795,936	GIMELLI ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Vera Stulii	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 25 June 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1,5,7-9,11,13,19 and 20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,5,7-9,11,13,19 and 20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

**Claims 1, 5, 7-9, 11, and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Ventres et al (EP 0350552). Wiley Encyclopedia of Food Science and Technology is cited as evidence.**

The references and rejection are incorporated as cited in the previous Office Action.

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

**Claims 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ventres et al in view of Oh et al (US 6,217,918).**

The references and rejection are incorporated as cited in the previous Office Action.

### ***Response to Arguments (Claim Rejections - 35 USC § 112)***

In light of recent claims amendments and Applicant's arguments, the rejection of claims 1-13 and 19-20 under 35 U.S.C. 112, second paragraph, has been withdrawn.

### ***Response to Arguments (Claim Rejections - 35 USC § 102)***

Applicant's arguments filed June 25, 2007 have been fully considered but they are not persuasive.

On page 9 of the Reply to the Office action mailed March 26, 2007, Applicant states that "[w]ith reference to claim 2, now incorporated in claim 1, Ventres fails to disclose a flour mixture with at least about 50.0% by weight of the flour mixture comprising gluten protein". Examiner respectfully disagrees. Applicant is referred to page 5 of Specification:

The flour suitable for use to make the farinaceous-based food product of this invention may be, for example, bean, barley, oat, potato, soy, *durum semolina*, buckwheat, rice, kamut, corn, rye, spelt, bleached, unbleached, whole wheat, yam, gluten flour or mixtures thereof, with the proviso that at least about 50.0%, and preferably, at least about 60.0%, and most preferably, from about 65.0% to about 100.0% by weight of the flour employed comprises gluten protein (i.e., prolamines and glutelins). *In an especially preferred embodiment, the farinaceous-based food product of this invention comprises 100.0% durum semolina as the flour source.*

Ventres et al disclose using "glutinous flour" (p. 3 line 40). Ventres et al also disclose using semolina flour obtained from durum wheat (i. e. durum semolina) (p. 3 lines 44-45). Ventres et al also disclose that non-glutinous flours may be added, but not necessarily, and therefore Ventres discloses using 100% of glutinous flour (durum semolina (p. 3 lines 40-59).

On page 9 of the Reply, Applicant states that "[w]ith reference to claim 6, now incorporated in claim 1, Ventres at Claim 14 on page 15 referred to in the Office Action fails to disclose about 1.0% to about 15.0% by weight of a protein additive with sufficient specificity to constitute anticipation". Examiner respectfully disagrees. In regard to claim 6, Ventres et al disclose that amount of additives (egg) is less than 25% by weight of dry ingredients (p.15 claim 14). Ventres discloses that alimentary paste as a glutinous flour

and water mixture having moisture content at 28%. Therefore Ventres discloses 72% by weight of dried ingredient. Thus, amount of additives (egg) is less than 25% by weight of dry ingredients, which less than 18% by weight of alimentary paste (i.e. farinaceous-based food product).

On page 9 of the Reply, Applicant states that "[w]ith reference to Claim 11, Ventres fails to disclose about 25.0% to about 35.0% water during or after extrusion with sufficient specificity to constitute anticipation". Examiner respectfully disagrees. It is noted that Ventres et al disclose "a feedstock comprised of glutinous flour and water within extruder to form an alimentary paste, the alimentary paste having total moisture content at or below 28% by weight" (p. 3 lines 10-12).

On page 9 of the Reply, Applicant states that "[w]ith reference to Claim 12, now a part of independent claim 1, Ventres fails to disclose about 4.0% to about 18.0% by weight water in the product with sufficient specificity to constitute anticipation". Examiner respectfully disagrees. Ventres et al discloses using 4000 g flour, 640 g water, and up to 15 g of glycerol monostearate, and therefor Ventres discloses 13.7 % by weight water in of alimentary paste (i.e. farinaceous-based food product) (p. 9 Example 9).

Regarding applicants arguments about inherency (p. 10 of Reply), it is noted that although the reference does not specifically disclose every possible quantification or characteristic of its product, including electron microscopy image data, the electron microscopy image data would have been expected to be in the claimed range absent any clear and convincing evidence and/or arguments to the contrary. The reference discloses the same starting materials and methods as instantly (both broadly and more

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specifically claimed), and thus one of the ordinary skill in the art would recognize that the microscopy image data, among many other characteristics of the referenced product, would have been an inherent result of the product disclosed therein. The Patent Office does not possess the facilities to make and test the referenced product, and as reasonable reading of the teachings of the reference has been applied and does anticipate the instant claims, the burden thus shifts to applicant to demonstrate otherwise.

***Response to Arguments (Claim Rejections - 35 USC § 103)***

Applicant's arguments regarding rejections under USC § 103 have been fully considered but they are not persuasive.

In response to applicant's argument that the references fail to show certain features of applicant's invention (p. 11 of the Reply), it is noted that the features upon which applicant relies (i.e., drying of pasta) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). As stated in the previous Office Action, in regard to claims 19 and 20, Oh et al disclose "[a] convenience food product comprising a microwavable pasta packaged in a

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container which facilitates even cooking in a microwave oven” (Abstract). Oh et al disclose that ingredients for pasta comprise semolina, durum, protein additive (egg), and water (Col. 8 lines 60-61, Col. 9 lines 3-6). Oh et al also disclose “[t]he present invention overcomes the problems associated with the prior art by providing a microwave container having a combination of geometric features which enhance the efficiency and uniformity of microwave cooking by taking into account the dielectric properties of the liquid food products being cooked and the geometry of the container in relation to the microwave wavelength” (Col. 2 lines 29-37).

Since Ventres et al disclose farinaceous-based food product comprising durum semolina, protein additive, and water, and Oh et al disclose a convenience food product comprising a microwavable pasta packaged in a container which facilitates even cooking in a microwave oven and use of similar ingredients as disclosed by Ventres et al, it would have been obvious to one of the ordinary skill in the art to modify disclosure of Ventres et al and package pasta in a microwavable container in order to produce a convenience food product which would facilitate even cooking in a microwave oven as taught by Oh et al.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

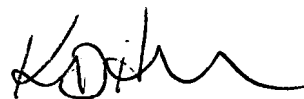
mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vera Stulii whose telephone number is (571) 272-3221. The examiner can normally be reached on 7:00 am-3:30 pm, Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

VS

  
**KEITH HENDRICKS**  
**PRIMARY EXAMINER**